



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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May 25 2021



STATE CLEARINGHOUSE

May 25, 2021

Ms. Sou Garner, Project Planner
Sonoma County Permit and Resource Management Department
Planning and Economic Development Department
2550 Ventura Avenue
Santa Rosa, CA 95403
sgarner@migcom.com

Subject: UPE18-0054 Saints Peter and Paul Russian Orthodox Church Cemetery,
Mitigated Negative Declaration, SCH No. 2021040772, Sonoma County

Dear Ms. Garner:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Sonoma (County) for the UPE18-0054 Saints Peter and Paul Russian Orthodox Church Cemetery Project (project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. **The project has the potential to result in take of California tiger salamander (CTS, *Ambystoma californiense*), a listed as threatened species, Sebastopol meadowfoam (*Limnanthes vinculans*), a listed as endangered species, and other listed plants as further described below.**

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Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings and a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **It appears that the project may impact an unnamed stream that is subject to notification requirements, as further described below.** CDFW will consider the CEQA document for the project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Michael Swicegood, Swicegood Civil Engineering, Inc., as agent for Project Operator and Site Owner, which is Sts. Peter and Paul Fund, LLC.

Objective: Construct a cemetery containing a 10.07-acre burial ground to be built in three phases on a 21-acre parcel. The cemetery would include a burial ground covering 10.07 acres, a 960-square-foot refrigeration building, 960-square-foot equipment storage building, a 320-square-foot columbarium, access roads, and memorial plaza.

Location: The project is located at 3367 Stony Point Road, south of the City of Santa Rosa in an unincorporated area of Sonoma County. It is located immediately west of Stony Point Road approximately 600 feet north of St. Olga Court on Assessor Parcel Number 134-082-055, and centered at approximately 38.395175°, -122.744021°.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the County in adequately identifying and/or mitigating the project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that an MND is appropriate for the project.

Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

CDFW Approvals

Comment 1: MND Pages 3 and 45

Please revise *Table 2 Agencies and Permits Required (Table 2)* to include that a CESA ITP from CDFW is required. Mitigation Measure (MM) BIO-5 requires an ITP to be obtained prior to grading of the project site.

Mitigation Measures

Comment 2: MND Page 43

Issue: The MND MMs BIO-1 and BIO-2 require avoidance of habitat for Sebastopol meadowfoam, a State and federally endangered species, or providing off-site habitat compensation for impacting the species. The MND indicates that protocol rare plant surveys were conducted in 2014 and 2015 resulting in detections of Sebastopol meadowfoam at four wetlands within the total 3.33 acres of wetlands on-site. However, it is unclear how it would be determined that impacts would be avoided, and these surveys may: 1) be outdated or may have occurred during drought conditions when other special-status plant species were undetectable, 2) not have included habitat adjacent to the project site that could be indirectly impacted, and 3) not have followed CDFW-approved protocols and consequently may not be reliable. Therefore, other special-status plants could have been missed, such as Sonoma sunshine (*Blennosperma bakeri*) or Burke's goldfields (*Lasthenia burkei*), which are both State and federally endangered species, and Sebastopol meadowfoam could have occupied additional habitat on-site since 2015. There is a CNDDDB record of Sonoma sunshine nearby to the west between Phillips Avenue and Llano Road (Phillips Avenue is approximately 700 feet west of the project site), and a CNDDDB unprocessed record of Burke's goldfields approximately 1.3 miles to the southwest confirming these species occur in the vicinity and could be present on and adjacent to the project site.

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Specific impacts and why they may occur: The project may result in the removal and loss of populations of Sebastopol meadowfoam, Sonoma sunshine, Burke's goldfields undetected during the above surveys or that have occupied habitat on-site after the 2015 surveys. It may also result in indirect impacts, such as hydrological modifications to habitat, to all three of the above-described endangered plants that may occur on-site but be inaccurately determined to be "avoided", or adjacent to the project site. Therefore, project impacts to Sebastopol meadowfoam, Sonoma sunshine, and Burke's goldfields would be *potentially significant*.

Recommendation: CDFW recommends that the MND include a mitigation measure requiring that prior to project construction:

1. A minimum of one additional year of rare plant surveys based on the significant area of suitable habitat for endangered plant species on and adjacent to the project site, the known population of endangered plant species detected in 2013 and 2015 on-site, and surveys conducted over 5 years ago;
2. All surveys and reporting shall be conducted in accordance with CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* for CDFW to accept the results. A minimum of two years of protocol level plant surveys shall be conducted pursuant to the Santa Rosa Plain Conservation Strategy Appendix D (see: <https://www.fws.gov/sacramento/es/Recovery-Planning/Santa-Rosa/santa-rosa-strategy.php>). The surveys shall include the project site and any adjacent suitable habitat that may be indirectly impacted by the project and must be conducted during appropriate conditions;
3. Rare plant survey reports must be accepted in writing by CDFW;
4. A description of project activities proposed to avoid impacts to endangered plants, including direct and indirect impacts, shall be provided to CDFW for review. The description shall minimally include a description of activities and their locations relative to endangered plant habitat, proposed avoidance buffers around such habitat, and a hydrological study demonstrating that habitat would not be indirectly impacted; and
5. The project shall obtain an ITP for Sebastopol meadowfoam and any other CESA listed plant species that may be impacted, as determined by CDFW based on review of the survey reports and any proposed impact avoidance per item 4 above.

Additionally, the MND should provide the acreage of habitat known to be occupied by Sebastopol meadowfoam, and the acreage of suitable habitat for all endangered plant species even if not currently known to be occupied, to better describe the environmental setting and extent of currently known proposed impacts, and include a figure depicting

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this information. The figure should also show the overall project area and acreage. The MND should recognize that the impact and mitigation acreages may be revised based on CDFW's review of the plant survey reports, and ITP or U.S. Fish and Wildlife Service's (USFWS) Biological Opinion requirements.

Comment 3: MND Pages 1, 2, 38, 45, and 47

The MND MM BIO-5a requires off-site habitat compensation for the loss of CTS habitat. CTS is a State threatened species; the CTS Sonoma County Distinct Population Segment is also a federally endangered species. To ensure habitat impacts are appropriately quantified and evaluated, the MND should provide the acreage of upland habitat and breeding habitat that would be impacted by the project, respectively, and include a figure depicting this information. The figure should also show the overall project area and acreage. Please clarify the total project area, as the MND indicates it may be either 10.07 acres or 10.33 acres.

MM BIO-5 requires the project to obtain an ITP prior to grading the project site. This mitigation measure should be revised to clearly require that prior to project construction, the project shall obtain an ITP for CTS (in addition to Sebastopol meadowfoam and any other CESA listed plants, as described above). Please be advised that the ITP habitat compensation requirements may differ from those prescribed in the Santa Rosa Plain Conservation Strategy.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

Environmental Setting

Comment 4: MND Page 41

Issue: The project is within the wintering distribution of burrowing owl (*Athene cunicularia*) and within and adjacent to grasslands that may be suitable foraging and wintering habitat for the species. Burrowing owl is a California Species of Special Concern and protected under Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act (MBTA) (Klute et al. 2003). Suitable wintering burrows or burrow surrogates may occur on or adjacent to the project site, or may be excavated within a single day prior to project construction by, for example, American badger (*Taxidea taxus*) (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Furthermore, burrowing owls may be adversely impacted up to several hundred feet from the project site from auditory and visual disturbances. The California Natural Diversity Database (CNDDDB) documents a burrowing owl approximately 5.3 miles

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southeast of the project site and 9 miles to the northwest, confirming the species has occurred in the vicinity of the project site and could use it and adjacent habitat.

Specific impacts and why they may occur: The project may result in reduced health and vigor, or mortality, of owls resulting from removal of wintering burrows, or wintering burrow abandonment caused by audio and visual disturbances from project construction activities. Therefore, project impacts to burrowing owl would be *potentially significant*.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND: (1) further analyze the potential for burrowing owl to occur on and adjacent to the project site, and (2) include a mitigation measure requiring a qualified biologist to conduct a habitat assessment, and surveys if habitat is present, following the California Department of Fish and Game (now CDFW) *2012 Staff Report on Burrowing Owl Mitigation* (CDFW 2012 Staff Report) habitat assessment and survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) prior to project activities occurring during the burrowing owl wintering season from September 1 to January 31. The habitat assessment and surveys shall encompass the project site and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or project activities shall trigger subsequent surveys, as determined by a qualified biologist, including but not limited to a final survey within 24 hours prior to ground disturbance before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 survey methodology resulting in detections.

Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site-specific conditions, and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan.

Comment 5: MND Page 41

Issue: The project is located within and adjacent to grassland habitat that may be suitable for American badger, a California Species of Special Concern. As stated above, badgers can dig burrows in a single day; therefore, the species may occupy the project site and adjacent habitat prior to project construction. There is a CNDDDB record of a badger approximately 1.4 miles west of the project site, and 3 miles to the northwest. These records confirm the species has occurred in the vicinity of the project site and could use it and adjacent habitat.

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Specific impacts and why they may occur: The project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, project impacts to American badger would be *potentially significant*.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND: (1) further analyze the potential for American badger to occur on and adjacent to the project site, and (2) include mitigation measures to ensure impacts are reduced to less-than-significant. These measures may include a qualified biologist surveying for the species including adjacent habitat prior to construction, avoiding occupied burrows including a sufficient buffer approved by CDFW, and preparing and implementing a CDFW-approved relocation plan if badgers are found on or adjacent to the project site. Off-site habitat compensation shall be required for any impacts to occupied habitat. Habitat compensation acreages shall be approved by CDFW and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan.

Comment 6: MND Page 41

Issue: The project could adversely impact pallid bat (*Antrozous pallidus*), a California Species of Special Concern, and other bat species. Pallid bats are known to inhabit man-made structures and have been documented roosting in buildings in Sonoma County (CDFW CWHR; Baker et al. 2008; Tatarian 1999).

Specific impacts and why they would occur: A 3,200-square-foot barn that may be occupied by breeding or roosting pallid bats and other bat species would be demolished, resulting in potential injury or mortality of bats. There is a CNDDDB record of the species approximately 8 miles northeast of the project location, confirming that it occurs in the region. Impacts to pallid bat would be *potentially significant*.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND include a mitigation measure requiring that prior to construction:

1. A qualified bat biologist shall conduct surveys for pallid bats prior to project construction. The survey methodology shall include an initial habitat assessment and survey several months before project construction, to facilitate sufficient time to implement the exclusion plan described below, and the types of equipment used for detection.
2. Biologist resumes and a survey methodology shall be submitted to the County for approval prior to implementing surveys. Biologist resumes shall reflect at least two years of experience conducting bat surveys that resulted in detections of pallid bat including the project name, dates, and person who can verify the

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experience. Ideally, the resume should also indicate that the biologist possesses a state-issued Scientific Collecting Permit for the relevant species.

3. An exclusion plan shall be submitted to the County for approval if bats are detected during the above survey. The plan shall: 1) recognize that both the maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, 2) identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat for the bats, such as artificial bat houses, and an associated management and monitoring plan with necessary funding, and 3) be implemented prior to project construction and allow bats to leave the building unharmed.

CDFW staff may be available to assist the County with review of the above-referenced materials.

Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW and USFWS?

Environmental Setting

Comment 7: MND Page 46

Issue: The MND indicates that riparian habitat does not occur on the project site; however, based on aerial imagery and the California Aquatic Resources Inventory database, an unnamed stream appears to flow from north to south on the west side of the project site, then west towards Phillips Avenue and south adjacent to the east side of Phillips Avenue, connecting downstream to the Colgan Creek Flood Control Channel.

It also appears that other aquatic features on the far west side of the property may constitute a stream and be connected to downstream waterways.

Specific impacts and why they may occur: The project may result in fill and removal of streams, or sedimentation or debris into the streams from construction activities involving earth moving activities. Impacts to potential streams and associated riparian habitat would be *potentially significant*.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND: (1) analyze and characterize all potential streams on the project site including reviewing aerial imagery and identifying downstream connectivity, and (2) include a mitigation measure requiring that prior to project construction, the project shall submit an LSA Notification for all impacts to streams to CDFW pursuant to Fish and Game Code section 1602, and obtain an LSA Agreement, unless otherwise approved by CDFW. Please be advised

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that natural streams and artificial waterways such as “ditches” may constitute a stream. Note that *Table 2* on MND Page 3 includes the requirement for an LSA Notification and related CDFW authorization.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

FILING FEES

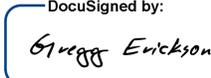
The project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the project. CDFW appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager, at Craig.Weightman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4693C604EA
Gregg Erickson
Regional Manager
Bay Delta Region

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ec: State Clearinghouse (SCH No. 2021040772)

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County of Sonoma

Kaete King, Kaete.King@waterboards.ca.gov
North Coast Regional Water Quality Control Board

Vincent Griego, Vincent_Griego@fws.gov
U.S. Fish and Wildlife Service

REFERENCES

Baker, Michael D., Michael J. Lacki, Greg A. Falxa and others. 2008. Habitat Use of Pallid Bats in Coniferous Forests of Northern California. Northwest Science: Vol. 82, No. 4.

Brehme, C.S., S.A. Hathaway, R. Booth, B.H. Smith and R.N. Fisher. 2015. Research of American Badgers in Western San Diego County, 2014. Data Summary prepared for California Department of Fish and Wildlife and the San Diego Association of Governments. 24pp. (42pp. with Appendix)

California Department of Fish and Wildlife (CDFW). California Wildlife Habitat Relationships System (CWHR). Pallid Bat. Accessed online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2349>

Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTP-R6001-2003, Washington, D.C.

Tatarian, G. 1999. Use of buildings and tolerance of disturbance by pallid bats *Antrozous pallidus*. Bat Research News 40:11-12.